

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 20, 2007

**STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES v.
T.P.H.R.**

**Appeal from the Juvenile Court for Hamilton County
Nos. 207,333; 207,334; 207,335 Suzanne Bailey, Judge**

No. E2006-02670-COA-R3-PT - FILED JULY 20, 2007

The Juvenile Court terminated the parental rights of T.P.H.R. ("Mother") to her three children, K.R.R., A.O.R., and C.T.R., (the "children") who are ages 7, 5 and 4, respectively. The Juvenile Court held that: (1) there was clear and convincing evidence that grounds existed to terminate Mother's parental rights pursuant to Tenn. Code Ann. §§ 36-1-113(g)(1), (g)(2) and (g)(3); (2) there was clear and convincing evidence that termination of Mother's parental rights was in the children's best interest; and (3) that the Department of Children's Services ("DCS") had made reasonable efforts to assist Mother to reunite with her children. Mother appeals challenging each of these rulings. After a careful review of the record, we affirm the Juvenile Court's judgment as modified.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Juvenile Court Affirmed as Modified; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., and SHARON G. LEE, JJ., joined.

D. Marty Lasley, Chattanooga, Tennessee, for the Appellant, T.P.H.R.

Robert E. Cooper, Jr., Attorney General and Reporter, and Amy T. McConnell, Assistant Attorney General, Nashville, Tennessee, for the Appellee, State of Tennessee, Department of Children's Services.

OPINION

Background

In April of 2006, DCS filed a petition to terminate Mother's parental rights to her three children.¹ According to the petition, the children initially came into DCS custody when they were taken away from their maternal grandparents because they were undernourished, dirty, lacked proper clothing, and infested with lice. Mother had left her children with their maternal grandparents, and Mother's whereabouts were unknown at that time. The children have been in DCS custody from December of 2004. The petition further alleged:

[The parents] were separated, reportedly due to domestic violence in the home. The mother had obtained an order of protection against the father, but was failing to abide by the terms of that order. The mother was homeless and refusing to go to a shelter with her children. The father had a history of domestic violence and had beaten the mother in the presence of the subject children.... The oldest child suffers from Downs Syndrome and was in need of specialized attention and care. The mother was an admitted drug user and was living with various friends in drug houses.

As grounds for terminating Mother's parental rights, DCS alleged that Mother had abandoned the children by willfully failing to support them or to make reasonable payments toward their support for a period of four consecutive months immediately preceding the filing of the petition. DCS further claimed that Mother failed to provide any child support even though she had agreed to do so in a permanency plan and had been ordered by the court to make support payments. DCS asserted that it had made reasonable efforts to assist Mother with establishing a suitable home for the children, but despite these efforts, Mother was unable to provide a suitable home and demonstrated a lack of concern for the children to such a degree that it appeared unlikely that she would be able to provide a suitable home at an early date. DCS claimed Mother failed to substantially comply with the terms and statement of responsibilities contained in a permanency plan. Specifically, she continued to use illegal drugs and "to live an unstable lifestyle with no suitable employment or residence." DCS further asserted that Mother's parental rights should be terminated because the children had been removed from her care for over one year and despite reasonable efforts by DCS to assist Mother, the conditions which led to the children's removal or other conditions existed which prevented the safe return of the children to Mother's care. DCS claimed there was little likelihood that these conditions would be remedied in the near future and that continuation of the parent/child relationships would greatly diminish the children's chances for early integration into a safe and stable home. Finally, DCS alleged that it was in the children's best interests for Mother's parental rights to be terminated.

¹DCS also sought to terminate the father's parental rights. The father's parental rights are not at issue in this appeal.

Mother was appointed an attorney to represent her in this termination proceeding. This case was set for trial on August 23, 2006. Mother was fully aware of the trial date. Mother's attorney was present at trial, but Mother was not. Court was adjourned briefly to allow Mother's attorney to attempt to locate her. He was unsuccessful, and the trial proceeded in her absence.

The first trial witness was Joyce Frazier ("Frazier"), a foster care case manager employed by DCS. Frazier has been assigned to this case from the time the children came into DCS custody in December of 2004. Frazier developed several permanency plans for Mother and explained the requirements of the plans to her. Among other things, these plans required Mother to maintain stable housing and employment. Mother also was required to undergo an alcohol and drug assessment as well as a parenting assessment, and to follow any recommendations that were made following the assessments. Mother did complete the assessments and Frazier discussed the results of the assessments with Mother. Thereafter, Mother completed an outpatient program. However, the parenting assessment required Mother to attend domestic violence counseling. Mother did not complete that counseling and attended only a few sessions. After the permanency plans were developed, Mother changed jobs several times and lived at five or six different places. Frazier did not know where Mother was living at the time of trial. Mother had not attempted to contact Frazier for the two month period before trial.

According to Frazier, Mother was no longer in a relationship with the children's father and had a new boyfriend. Unfortunately, this new relationship also was abusive and there were repeated episodes of domestic violence. After the last incident of domestic violence in May of 2006, Mother assured Frazier that she was no longer living with the new boyfriend. Frazier could not verify whether Mother actually ended that relationship.

Frazier testified that although Mother consistently visited with the children, she has not paid any child support since the children came into DCS custody. Mother has not paid any child support even though she has been employed off and on over the past two years.

According to Frazier, Mother's "drug of choice" was marijuana, and Mother attended outpatient treatment for her drug use. However, Mother's most recent drug test was in March of 2006, and she tested positive for THC.

Frazier stated that there has never been a point in the past two years where she thought it was safe to return the children to Mother's care. According to Frazier, the children could not have been returned:

Due to the violence that was going on in the home. We received police reports. I believe they have three police reports ... reporting domestic violence in the home, trips to the hospital ... severe injuries, stab wounds. It just didn't seem like a safe environment to return the children.

Frazier stated that the children are adoptable children and have been placed in a foster care home and the foster mother is desirous of adopting the children. Frazier added that the children are doing very well with the current foster care placement, and they are happy and well cared for. When the children first came into DCS custody, the youngest child would bang his head on the wall when he became upset. The children had problems with hitting each other. The oldest child, who has Downs Syndrome, either could not or would not speak. Frazier noted that the children no longer have these problems and the oldest child's vocabulary has improved "a great deal." Frazier explained that the children need a stable and permanent home and she is aware of no less drastic alternative than to terminate Mother's parental rights.

The next witness was Detective Ike Cooper ("Det. Cooper"), an officer with the Red Bank Police Department. Det. Cooper investigated allegations of domestic abuse made by Mother. In May of 2006, Det. Cooper went to Mother's house. Mother was living with Michael Sullivan at the time. Mother had been taken to the emergency room after she was beaten by Mr. Sullivan. Mother had bruises and abrasions. This was the third time the police department had been called to Mother's residence because of domestic violence. Mr. Sullivan was charged with domestic violence. When the case went to court, Mother requested Det. Cooper and the district attorney not to prosecute Mr. Sullivan.

The next witness was the foster mother. According to the foster mother, when the children first came into her care:

they were – they'd been neglected. They were far behind on their learning. They acted hungry. They had no structure in their life, no routine.... I'm pretty sure they'd been pretty neglected.

On two occasions, the middle child told the foster mother about her mom and dad getting into a fight, that her dad hit her mother, and the child hid under the bed. The children now have structure in their lives. The children are doing well and the foster mother expressed her desire to adopt all three children.

Following the trial, the Juvenile Court entered an order terminating Mother's parental rights. The Juvenile Court's order states, *inter alia*:

Grounds for termination of the parental rights of [Mother] to the children ... exist, in that:

(a) The Department made reasonable efforts to assist [Mother] to establish a suitable home for the children for a period of four (4) months following the removal, but [Mother] made no reasonable efforts to provide a suitable home and demonstrated a lack of concern for the children to such a degree that it appears unlikely that she will be able to provide a suitable home for the children at an early date.

The Department prepared reasonable and related permanency plans for the mother, and provide[d] her information necessary to complete her responsibilities. The Department facilitated visitation and assisted with transportation, attempted to keep the mother notified of hearings, meetings, appointments, etc., maintained accurate records, and provided for all the children's needs. The mother failed to substantially comply with her permanency plan responsibilities, failed to provide the children a suitable and safe home, failed to obtain and maintain suitable employment or residence, failed to participate in domestic violence counseling, and continued to be involved in violent relationships and illegal drug use.

(b) [Mother] failed to comply in a substantial manner with the statement of responsibilities set out in periodic foster care plans prepared for and signed by [Mother], following the subject children being found to be dependent and neglected by this Court. Children's Services had explained to [Mother] those reasonable responsibilities, which are directly related and aimed at remedying the conditions, which necessitate foster care placement. Specifically, [Mother] failed to maintain stable employment and residence, failed to [remain drug-free] ..., and failed to participate in [domestic violence] counseling as recommended in her parenting plan.

(c) The subject children have been removed by order of a court for a period of at least six (6) months, specifically since December 30, 2004. The conditions which led to the removal still persist or other conditions persist which in all probability would cause the children to be subjected to further abuse and neglect and which, therefore, prevent the children's return to the care of [Mother]. There is little likelihood that these conditions will be remedied at an early date so that the children can be placed in the care of [Mother] in the near future. The Department took the subject children into protective custody on the afternoon of December 29, 2004. The children were found in the home of their maternal grandparents, and the mother's whereabouts were unknown. [Mother and the father] were separated, reportedly due to domestic violence in the home. The mother had obtained an order of protection against the father, but was failing to abide by the terms of that order. The mother was homeless and refusing to go to a shelter with her children. The father had a history of domestic violence and had beaten the mother in the presence of the subject children. The children appeared undernourished and were dirty, infested with lice and lacked proper clothing for the weather. The oldest child suffers from Downs

Syndrome and was in need of specialized attention and care. The mother was an admitted drug user and was living with various friends in drug houses. Due to the emergency nature of the children's circumstances, the Department had no opportunity to provide preventive services, and the Court found the lack thereof to be reasonable. There has been no significant change in the conditions leading to the children's removal and the mother has abandoned the children in foster care by her lack of participation and progress, and by her continued illegal drug use. Prior to the filing of the Department's petition in this matter, the mother most recently tested positive for Marijuana in March 2006....

The Juvenile Court then concluded that it was in the children's best interests for Mother's parental rights to be terminated. The Juvenile Court restated many of its factual findings made above, including the fact that Mother's home environment was not safe for the children and Mother had not made a reasonable effort to provide a safe environment for the children. The Juvenile Court also concluded that a change in caretakers would have a highly negative impact on the children and that continuation of the parent/child relationship would greatly diminish the children's chances for early integration into a safe and stable home.

Following entry of the judgment, Mother filed a "Motion to Reconsider/Set Aside Default." In this motion, Mother claimed she was not present at the trial because an immediate family member was seriously ill and she was at the hospital with that family member.² The first two times Mother's motion was set for hearing, Mother did not show up for the hearing, and the hearing was rescheduled. The third hearing on Mother's motion was scheduled for December 20, 2006. Mother did not show up for the third hearing either, and the Juvenile Court entered an order stating:

[T]he subject motion should be dismissed.... [Mother] failed to appear at the hearing on the instant motion, and has likewise failed to appear on two prior settings of the same motion.... [Mother] was duly notified by her attorney as to the time and place of the hearing on this motion, and fully advised as to the implications of this motion.

Mother appeals claiming: (1) the Juvenile Court erred when it entered a default judgment against her and when it refused to set that default judgment aside; (2) DCS failed to prove that it had made a reasonable effort to assist Mother; (3) the Juvenile Court erred when it concluded that Mother failed to substantially comply with the permanency plans; (4) the Juvenile Court erred in finding that Mother failed to make any adjustment of circumstances, conduct, or conditions that would enable the children to be returned to her care; (5) the Juvenile Court erred when it found that

² Although not determinative, the motion did not contain any sworn testimony, via affidavit or otherwise, setting forth Mother's alleged reason for missing the trial.

the conditions which led to the children's removal still persisted; and (6) the Juvenile Court erred in finding that it was in the children's best interests to terminate Mother's parental rights.

Discussion

Our Supreme Court recently reiterated the standard of review for cases involving termination of parental rights. According to the Supreme Court:

This Court must review findings of fact made by the trial court *de novo* upon the record "accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d). To terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). Upon reviewing a termination of parental rights, this Court's duty, then, is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

In re F.R.R., III, 193 S.W.3d 528, 530 (Tenn. 2006).

In *Dep't of Children's Servs. v. D.G.S.L.*, this Court discussed the relevant burden of proof in cases involving termination of parental rights. Specifically, we observed:

It is well established that "parents have a fundamental right to the care, custody, and control of their children." *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)). "However, this right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute." *Id.* (citing *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)).

Termination of parental or guardianship rights must be based upon a finding by the court that: (1) the grounds for termination of parental or guardianship rights have been established by clear and convincing evidence; and (2) termination of the parent's or guardian's rights is in the best interests of the child. Tenn. Code Ann. § 36-1-113(c). Before a parent's rights can be terminated, it must be shown that the parent is unfit or substantial harm to the child will result if parental rights are not terminated. *In re Swanson*, 2 S.W.3d

180, 188 (Tenn. 1999); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Similarly, before the court may inquire as to whether termination of parental rights is in the best interests of the child, the court must first determine that the grounds for termination have been established by clear and convincing evidence. Tenn. Code Ann. § 36-1-113(c)....

Dep't of Children's Servs. v. D.G.S.L., No. E2001-00742-COA-R3-JV, 2001 WL 1660838, at *6 (Tenn. Ct. App. Dec. 28, 2001), *no appl. perm. appeal filed*.

The Juvenile Court terminated Mother's parental rights pursuant Tenn. Code Ann. §§ 36-1-113(g)(1), (g)(2), and (g)(3) (Supp. 2006), which provide:

(g) Initiation of termination of parental or guardianship rights may be based upon any of the following grounds:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4;

(3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home

Mother's first issue is whether the Juvenile Court erred when it entered a "Default Judgment" against her and, if not, whether the Juvenile Court erred when it refused to set that

judgment aside. The caption of the judgment entered by the Juvenile Court states: “Default Judgment” and “Termination of Parental Rights and Final Decree of Partial Guardianship.” We believe the Juvenile Court incorrectly used the term “Default Judgment” on the heading of the final judgment. No default judgment was entered. This case was tried as scheduled, albeit without Mother being present.

We were confronted with similar facts in *Schrader v. Schrader*, No. E2005-02614-COA-R3-CV, 2007 WL 27118 (Tenn. Ct. App. Jan. 4, 2007), *no appl. perm. appeal filed*. *Schrader* was a divorce case in which the husband failed to appear at trial. The trial proceeded in his absence. The husband claimed on appeal that the trial court erred when it entered a “default judgment” against him. We rejected that argument, stating:

Initially we must address Husband’s argument in his brief that the trial court entered a default judgment against him. Very recently, in *Sandalwood Properties, LLC v. Roberts*, No. E2006-01163-COA-R3-CV, 2006 WL 3431939, at *3 (Tenn. Ct. App. E.S., filed November 29, 2006), we rejected a similar argument and concluded that a party’s lack of attendance at trial does not convert a judgment into a default judgment. We stated that we were

compelled to disagree with the Tenants’ designation of the Circuit Court’s judgment ... as a ‘default judgment.’ It does not follow from the mere fact that the Tenants were absent from the hearing ... that the judgment entered against them was a default judgment.

See also Harper v. Harper, No. E2002-01259-COA-R3-CV, 2003 WL 192151, at *4 (Tenn. Ct. App. E.S., filed January 29, 2003), *no appl. perm. appeal filed*, (“Wife’s absence at trial does not magically convert the final judgment into a default judgment. We reject Wife’s argument that a default judgment was entered in this case.”).

Schrader, 2007 WL 27118, at *5 (footnote omitted).

The judgment entered against Mother in the present case was not a default judgment. Rather, it was a judgment that was entered following a full evidentiary trial.

The next issue is whether the Juvenile Court erred when it refused to set aside the judgment. Because Mother’s motion to set aside the improperly named default judgment was filed within 30 days of the judgment being entered, we will treat the motion as a motion for a new trial

pursuant to Tenn. R. Civ. P. 59. *See Schrader*, 2007 WL 27118, at *5. When reviewing a trial court's denial of a motion for new trial, we utilize the abuse of discretion standard. *Id.*

The Juvenile Court certainly acted within its authority when it proceeded to conduct the trial even though Mother was not present. There is no doubt that Mother was apprised of the trial date. No one knew where Mother was. She failed to inform both the Juvenile Court and her attorney that she could not be present on the morning of trial. We do not have to decide whether Mother's asserted reason for missing the trial constituted a satisfactory explanation. We need not reach this issue because Mother failed to appear all three times her motion for a new trial was scheduled for a hearing. Thus, Mother actually never informed the Juvenile Court exactly why she was not at trial because she missed all three of her opportunities to explain her non-attendance to the Juvenile Court. Accordingly, we cannot conclude that the Juvenile Court abused its discretion when it refused to set aside the judgment and grant Mother's request for a new trial. *See Schrader*, 2007 WL 27118, at *5 ("We do not believe the trial court abused its discretion when it refused to set aside the final judgment because Husband was not present at the trial.").

The next issue is whether DCS proved, by clear and convincing evidence, that Mother abandoned the children by willfully failing to pay child support in accordance with Tenn. Code Ann. § 36-1-113(g)(1). For purposes of this appeal, abandonment is defined as:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child....

Tenn. Code Ann. § 36-1-102(1)(A)(i) (2005).

Frazier testified at trial that: (1) Mother was employed off and on during the twenty months that the children were in DCS custody; (2) Mother was ordered by the Court to make child support payments; (3) Mother was required by the permanency plan to make child support payments; and (4) Mother never made any child support payments. We do not think this testimony, standing alone, is sufficient to establish abandonment. The problem lies in the fact that there was no evidence presented which pertained to whether Mother was working or otherwise able to pay child support during the specific time frame at issue, i.e., the four month period immediately preceding the filing of the petition to terminate Mother's parental rights. We do not know from the record if Mother was working during the relevant time frame. Likewise, if Mother was not working, we do not know why. We acknowledge the irony of this conclusion in that the reason this proof was not elicited at trial was because Mother was not there. Nevertheless, we cannot simply infer a willfulness on Mother's part

not to pay child support. The judgment of the Juvenile Court terminating Mother's parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(1) is, therefore, vacated.

The next issue is whether the Juvenile Court properly terminated Mother's parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(2) based on Mother's alleged failure to substantially comply with the statement of responsibilities contained in a permanency plan. Among other things, the permanency plans required Mother to be able to provide a suitable home for the children and to maintain stable employment. Mother did neither of these. The plan required Mother to stay drug free. She continued to use marijuana. Mother did not complete domestic violence counseling and the children were repeatedly exposed to domestic violence. While Mother did complete some of the requirements of the plans, she failed to complete the most significant requirements and never has been able to provide a suitable home for her three young children. We, therefore, affirm the Juvenile Court's determination that DCS proved, by clear and convincing evidence, that Mother failed to substantially comply with the statement of responsibilities contained in her permanency plans.

The next issue is whether the Juvenile Court properly terminated Mother's parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(3). By the time of trial, the children unquestionably had been removed from Mother's home for a period of at least six months. The conditions which led to the children being in DCS care continue to exist. Mother was not able to care for these children when DCS initially obtained temporary custody, and the situation was no better by the time of trial. Mother continued to use drugs. She had not demonstrated an ability to maintain stable employment which would enable her financially to care for the children. Mother never established her ability to provide a suitable home for these children. There was no proof whatsoever which would even remotely suggest that Mother would be able to remedy these problems at any time in the near future.

DCS clearly made reasonable efforts to assist Mother when the children came into DCS custody. Unfortunately, these efforts met with very limited success. Continuation of the parent/child relationship certainly would diminish the children's chances for early integration into a safe and stable home given that they are receiving excellent care from their foster mother who is desirous of adopting all three children.

In short, there was clear and convincing evidence to support the Juvenile Court's determination that DCS made reasonable efforts to assist Mother and, notwithstanding these efforts, conditions continued to exist that would prevent the children from safely being returned to Mother's care. The judgment of the Juvenile Court that DCS had clearly and convincingly proven grounds to terminate Mother's parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(3) is, therefore, affirmed.

The final determination made by the Juvenile Court was that there was clear and convincing evidence that it was in the children's best interests for Mother's parental rights to be terminated. The factors a trial court must consider when deciding whether the termination of

parental rights is in the best interest of a child are set forth in Tenn. Code Ann. § 36-1-113(i) (Supp. 2006). In relevant part, these factors are:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
- (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

The above list is not exhaustive and there is no requirement that all of the factors must be present before a trial court can determine that termination of parental rights is in a child's best interest. *See Dep't. of Children's Servs. v. P.M.T.*, No. E2006-00057-COA-R3-PT, 2006 WL 2644373, at *9 (Tenn. Ct. App. Sept. 15, 2006), *no appl. perm. appeal filed*.

Mother made no significant adjustment of circumstance and it would not be safe for the children to be returned to her care. Notwithstanding the reasonable efforts to assist Mother made by DCS, there is nothing to suggest that the situation will change at any time in the near future. The children are receiving excellent care by their foster mother, who wants to adopt the children. After considering all of the pertinent statutory factors, we conclude that the Juvenile Court correctly determined that there was clear and convincing evidence that termination of Mother's parental rights was in the best interests of all three children.

Conclusion

The judgment of the Juvenile Court is affirmed as modified. This case is remanded to the Juvenile Court for collection of the costs below. Costs on appeal are taxed to the Appellant, T.P.H.R. and her surety, if any.

D. MICHAEL SWINEY, JUDGE